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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/733,626      | 12/08/2000  | G. Scott Barbieri    | B0932/7158/REH      | 2410             |

7590

12/04/2001

Robert E. Hunt  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, MA 02210

EXAMINER

MAR, MICHAEL Y

ART UNIT

PAPER NUMBER

3619

DATE MAILED: 12/04/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/733,626

Applicant(s)  
Barbieri et al

Examiner  
Michael Mar

Art Unit  
3619



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE One MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-51 are subject to restriction and/or election requirement

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. This application contains claims directed to the following patentably distinct species of the claimed invention found in the following groups:

- I. a) Spacers 2 made of rigid material
- b) Spacers 2 made of elastomer material
- c) Spacer with a spring biased hinge
  
- II. a) A deck having lateral edges which are coplanar with a central portion (Fig. 1)
- b) A deck having uplifted lateral edges (Fig. 4)
  
- III. a) Round holes 31 in the runner 3 (Fig. 2)
- b) Longitudinal slots 31 in the runner 3 (Fig. 6)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from Group I, a single disclosed species from Group II, and a single disclosed species from Group III for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon,

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including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. A telephone call was made to Robert Hunt on Nov. 30, 2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

3. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

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**or faxed to:**

(703) 308-2571

(for formal communications intended be entered)

(all informal communications should be labeled "PROPOSED" OR "DRAFT")

**or hand delivered to:**

Crystal Park 5, 2451 Crystal Drive, Arlington, Virginia 22202

Seventh Floor(receptionist)

4. Any inquiry concerning this communication should be directed to Michael Mar at telephone number (703) 308-2087 or by e-mail at: [michael.mar@uspto.gov](mailto:michael.mar@uspto.gov).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



**MICHAEL MAR**

**Primary Examiner**

M.Mar

Nov. 30, 2001